

UNITED STATES PATENT AND TRADEMARK OFFICE  
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February 1, 2023

Opposition No. 91249886 (parent)

Cancellation No. 92072657

*LBJ Trademarks, LLC and LeBron James*

*v.*

*James Golding*

**Jill M. McCormack, Interlocutory Attorney:**

On April 1, 2021, the Board denied Opposers' motion for a protective order to prohibit Applicant from taking the deposition of co-Opposer LeBron James. (22 TTABVUE). Following that decision, Opposers filed, inter alia, (1) a request for reconsideration of the Board's April 1, 2021 Order, which was denied on September 1, 2021 (27 TTABVUE); (2) a petition to the Director requesting review of the Board's denial of the request for reconsideration, which was denied in a decision dated December 20, 2021, (35 TTABVUE), because it was untimely and lacked an explanation of why the filing was in paper; and (3) a petition requesting reconsideration of the denial of the petition, which has now been denied in a decision dated January 9, 2023, (39 TTABVUE). In light of the foregoing, proceedings in these consolidated cases are now ready for resumption.

To avoid further delay in these proceedings and to ensure the timely completion of Mr. James' deposition, the parties are hereby ordered to appear by telephone for a conference with the Board to address the remaining discovery issues in this case. *See* Trademark Rule 2.120(j), 37 C.F.R. § 2.120(j); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 413.01 (2022). The parties must confer to determine at least two mutually-agreeable dates and times before March 3, 2023, wherein the parties are available to have the conference with the Board. The assigned Interlocutory Attorney will reach out to the parties via email to schedule the conference and to provide the parties with call-in information.

In advance of the conference, Opposers must select at least three dates and times, within 60 days of the conference date, wherein Mr. James is available for deposition. As stated in the Board's April 1, 2021 Order, the deposition of Mr. James may take place by video teleconference, telephone or similar acceptable means. *See, e.g., Flanders v. DiMarzio, Inc.*, 2020 USPQ2d 10671, \*5 (TTAB 2020); *Hewlett-Packard Co. v. Healthcare Personnel Inc.*, 21 USPQ2d 1552, 1553 (TTAB 1991). For convenience, however, the Board strongly encourages Opposers to select dates and times wherein Mr. James is available to proceed at one of the offices of his counsel, for example, one of their several offices located in California.<sup>1</sup>

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<sup>1</sup> Under Fed. R. Civ. P. 30(b)(4), when a deposition is taken by telephone, "[f]or the purpose of this rule and [Rule 28(a)], the deposition takes place where the deponent answers the questions." Rule 28(a) requires that "a deposition must be taken before: (A) an officer authorized to administer oaths . . ." "The most logical and obvious construction of these rules requires the notary or court reporter to be in the presence of the deponent, rather than in the presence of the attorneys conducting the examination." *Aquino v. Auto. Serv. Indus. Ass'n*, 93 F.Supp.2d 922, 923-4 (N.D. Ill. 2000); *see also Hudson v. Spellman High Voltage*, 178 F.R.D. 29, 32 (E.D.N.Y. 1998).

In addition, the parties should be prepared to discuss during the conference any additional, outstanding discovery that needs to be completed in these proceedings, including expert discovery and any pending discovery responses. The Board will reset remaining dates, including the close of the discovery period, during the conference.

Failure to appear at the conference, or to be adequately prepared therefor, may result in sanctions, up to and including the sanction of judgment, for failure to comply with this order. *See* Trademark Rule 2.120(h)(1), 37 C.F.R. § 2.120(h)(1).

Proceedings otherwise remain SUSPENDED. The Board will resume proceedings following the conference.